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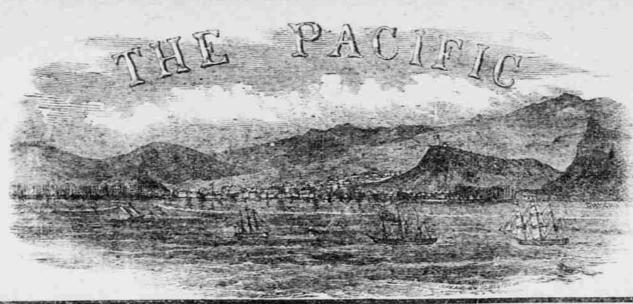
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VOL. XXVIII--NO. 31.

HONOLULU, HAWAIIAN ISLANDS, JANUARY 26. 1884.

WHOLE NO. 1431.

SUPREME COURT OF THE HAWAIIAN ISLANDS-IN EQUITY

Emma Kaleleonalani and Ruth Keelikolani vs. W.

Before the Chancellor.

Opinion of Chancellor Judd.

(1) The bill alleges in substance that His Majesty Kamehameha IV died intestate, Nov. 30, 1863, leaving as his sole beirs at law his widow, Queen Emma, and his father M. Keknanaoa, who died intestate, leaving his son, Kamehameha V. and his daughter, said Ruth Keelikolani, as his heirs, and that Kamehameha V thereafter died intestate, leaving the plaintiff R. Keelikolani as his heir at law, and that by the statutes of this Kingdom the plaintiffs are entitled, share and share alike, to the private estate of Kamehameha IV.

(2) That Kamehameha IV was seized and possessed in his lifetime, in his private capacity in fee simple, of all that parcel of land situated on Mer-Ship Carpenter, Spar Maker, and Caulker, chant street, in Honolulu, (describing it) being part of award of the Land Commission No. 10,806 to Kamehameha III. which said premises were devised to Kamehameha IV by will of Kamehameha III, duly admitted to probate.

(3) That His Majesty Kamehameha IV, by a recorded deed, conveyed to William Webster, his confidential Secretary, the land above described, to enable Mr. Webster to raise money upon mortgage for the use of His Majesty and that the several mortgages which were thus made have long since been paid and discharged.

(4) That on 25th October, 1866, the then Commissioners of Crown Lands, procured Robert Moffitt, the executor of the will of William Webster, to execute an instrument declaring that said Webster held the premises above described stogether with many other parcels of land, as trustee of Kamehameha IV, in order to raise money upon mortgage of the same which had been paid, and conveying all the right title and interest of the said Webster, in the said premises, to the Commissioners of Crown Lands

That the Crown Land Commissioners thereupon took possession of the premises and they and their successors have ever since received and collected

(5) That many of the other lands mentioned in the last mentioned deed were a portion of the Royal Domain and the said premises were included in the said instrument by mistake and that so far as the Commissioners have acquired any title to the premises by virtue of the said instrument, it was as trustees for the heirs of Kamehameha IV. That the Commissioners claim that the premises

comprised portions of the Royal Domain or Crown MPORTER AND DEALER IN CLOTH-ING, Boots, Shors, Hais, Caps, Jewery, Perfamery, no title therein, but that the contrary is the truth. (6) That the plaintiff's are unacquainted with business and have to depend on agents for the management of their affairs, and that they have but recently been informed that said premises were part of the private estate of Kamehameha IV, but on the contrary have been often informed by the Commissioners of Crown Lands that the said premises comprised a portion of the Royal Domain, and that under the decision of the Supreme Court in

> were entitled to no portion thereof. The bill prays that defendants may be decreed to hold the p emises, as did William Webster in his lifetime, upon trust for the heirs of Kamehameha IV, and that defendants be ordered to convey all their right, title, and interest in and to the said premises to the plaintiffs, and that they may be put in possession of the same, and that defendants be ordered to account for the rents and

the matter of the estate of Kamehameha IV, they

The answer of the respondents admits the allegations in the first paragraph, but denies the legal conclusion that the plaintiffs are entitled, share and share alike to the private estate of Kamehameha IV.

As to the second paragraph, the respondents deny that Kamehameha IV died seized in his private capacity, of the premises in the complaint described, but admit that he was seized of a part of the land, describing the same by metes and bounds, and the plaintiffs thereupon disclaim title in so much of the premises described in their omplaint as was conveyed by Kamehamcha IV to Minister of the Interior, and it was conceded

the portion disclaimed represents the difference between the land described in the cemplaint, and that admitted a the answer. The third paragraph of the bill is admitted, and

also the fourth, except as to the extent of the The fifth and sixth paragraphs are neither admitted nor denied, and the respondents say that

R. Keelikolani, on the 30th September, 1880, by deed of that date for a valuable consideration paid her by Claus Spreekels, conveyed and quit claim to him all the lands therein mentioned, and a copy of the deed is annexed to the answer. That at the time of the execution and delivery of the deed, the land, the subject of the suit, was commonly called, reported, and known to be a Crown Land, and was derived by said Keelikolani as heir to her father and brother aforesaid. That by deed dated August 11th, 1882, Claus Spreckels conveyed to the defendants as such Commissioners all his estate in the said premises. That the respondents claim to hold the premises against both the complainants by virtue of an act of the Legislature of January 3rd, 1865, entitled "An Act to relieve the Royal Domain from encumbrance, and to make the same inalien-

The complainant, Keelikolani, died on the 24th May, 1883, and C. R. Bishop and R. W. Meyer, executors of her will, make this suggestion on the 5th October, and ask that the suit be continued. I will confine myself to a brief statement of the

conclusions reached by me in this case. I. The land in question comprising the premises formerly known as " Honolulu Hale," used as the Government offices for many years, is not in the list of lands reserved by Kamehameha III for himself and his successors, but was awarded to him Kamehameha V, having relieved the same of a mortby the Land Commission upon application and evi-

II. It was therefore the private land of Kamehameha III, and was unaffected by the instrument 7th June, 1848, confirming the same, and came to Kamehameha IV as private land.

III. On the death of Kamehan cha IV. intestate, land of this character would descend not to the successor to the throne but to the heirs-at-law of the King who are now represented by the plaintiffs. IV. But Kamehameha IV had in his life time conveyed this land to William Webster by deed dated 18th March, 1856, and Mr. Webster had raised money for His Majesty by mortgage upon

V. On the 25th October, 1866 Mr. Webster being then deceased, the executor of his will, R. Moffitt, released the premises to the then Commissioners ment smoother than it would be otherof Crown Lands. This was ineffectual to convey | Wise.

the legal title which W. Webster had, for this was in his devisee. But the title outstanding in another person is not in controversy here. The Commissioners of Crown Lands take nothing by the

VI. So far, then, the complainants are entitled to relief as against the Crown Commissioners, who M. Gibson. et al., Commissioners of Crown are in possession under claim of title. But there is urged in evidence of Keelikolani's claim, her conveyance to Claus Spreckels, the interest conveyed being now held by respondents. Does this deed include the premises in controversy? By it Keelikolani conveys, for a valuable consideration, to Claus Spreckels, all and singular, the several lands reserved to His Majesty Kamehameha IV. to be his own private property and mentioned and specified and declared by a certain Act passed on Lands, together with all rights, easements and ap- of the Sisters of St. Francis. purtenances to the said lands, or any or either of them belonging, "and all my estate right, title and interest both at law and in equity of, in and to the said lands and of all other lands commonly called, known or reputed to be Crown Lands or to be part, parcel or member thereof, and whether beonging to me or to which I may be now entitled, either as heir to his said Majesty Kamehameha the Third, or their late Majesties Kamehameha the IV, Kamehameha the V, my father the late M. Kekuanaoa or in any other name or right whatsoever."

The language above used is broad enough to cover the land in question for it was commonly called. known and reputed to be "Crown Land," and such land Keelikolani conveys her rights in to Mr. Claus Spreckels, whether entitled to them as heir of Kamehameha III. IV, or V, or of Kekuanaoa. The eviidence is that all the lands which Kamehameha IV had, whether in the Reserved List of 1848 or lands which came to him in any other way were treated by Webster as "Crown Lands," and that the premises in dispute were taken possession of by Governor

The general rule is clear as to construction of deeds that the meaning and intention of the parties themselves abould be ascertained if possible from the instrument and from the whole instrument, 2 Greenleaf's Cruise, P 295,299. Another important rule of construction is that "where the lands are first described generally, and afterwards a particular description is added, that shall restrain the general words." 2 Greenleaf's Cruise, P. 343. It is unessential whether the particular description follows or precedes the general words, "Where there is a particular recital in a deed and general

words of release are afterwards inserted, the gen-

erality of the words shall be qualified by the regital." 2 Greenleaf's Cruise, p. 304. "General words shall be aptly restrained according to the subject matter or person to which they refer." Broome's Legal Maxima, p. 275. Pothier says " However general the terms may be in which an agreement is conceived, it only comprises those things respecting which it appears the contracting parties proposed to contract, and not as to others which they never thought of." 1

Poth., Obl., p. 98. The leading case is Moore vs. Magratha, Cowper's R. 9, decided by Lord Mansfield in 1774. steward, Mr. Van Giesen, proclaimed aloud, the See also Lyman vs. Clark, 9 Mass., 235. Willes vs. Ferris, 5 Johnson, 335, 345. The question in in every case is, what was intended to be conveyed? But this land was not Crown Land in the sense that it descended to the successors of the throne; t was not affected by this limitation. Did Keelikolani intend to convey anything but her supposed claim to the Crown Lands? I think not. She was not bound by the mistake into which not only she, but her co-complainant and many others, had fallen, in supposing that the land in question was in the reserved list, and entailed, as it were, to the sovereigns of Hawaii. But it may be objected that she had no valid claim to the Crown Lands, for they passed to the heir and successor to the throne, which she was not, and not to the heir-at-law, and so the land in dispute and other lands under the same title going to her by descent through Kamehameha IV, and M. Kekuanaoa and Kamehameha V were the only lands of which she had title to convey. The answer is obvious. Her intention gathered from the deed my life," were his first words. He proceeded to as a whole was to convey to Mr. Spreckels her describe the mission for which the Sisters had interest and claim, whether valid or invalid, to arrived, and then pronounced the chapel to be the Crown Lands, and not to convey all property | dedicated to Saint Philemon. He exhorted the inherited by her from her father or her royal half-

To hold that this deed by force of the language out precedent in the history of this Kingdom, employed includes a piece of land which came to Keelikolani by inheritance from Kekuanaoa, who inherited it from Kamehameha IV, who owned it as private estate merely because it had been called and reputed to be "Crown Land," would compel me to hold that it includes land derived by Keelikolani from Kekuanaoa which came to him by inheritance from Victoria Kamamalu, or from any other source, provided it had been known or called (whether erroneously or not, is immaterial)

As I have said, this land was not Crown Land descendable to the next King, but the property of the King as Alexander Liholiho and Keelikolani did not intend to convey any such lands to Mr.

But it is urged that the Act of 1866, to relieve the Royal Domain, etc., cast the duty upon the administrator of Kamehameha IV to exhaust all the private lands of Kamehameha IV, before drawing the money appropriated by the Legislature for the payment of his debts; and as the administrator did not sell this land, supposing it to be Crown Land, the heirs of Kamehameha IV are now doctrine to surrender it for any consideration which did not move to them from the respondents. The equitable lien which the Government may have upon the land by virtue of its grant to

gage, is another question; but the Government is not impleaded, nor does it hold possession of the Upon a careful review of the whole case, I am of reservation of March 8th, 1848, and the Act of of the opinion that the complainants are entitled to the relief prayed for.

A. S. Hartweil, W. R. Castle, and F. M. Hatch for complainants. E. Preston for respondents January 19, 1884.

The statue of Gladstone was unveiled in this land. The mortgage presented shows it was the City Liberal Clubrooms, London on the released upon payment of the amount secured by 13th of December. Earl Granville delivered the administrators of the estate of Kamehameha a strong personal eulogium upon Gladstone Referring to foreign affairs, he believed all

DEDICATION OF ST. PHILEMON'S.

An interesting and impressive ceremony was performed at the Branch Hospital for lepers last Monday morning. This was the dedication of the Roman Catholic chapel, which forms part of the building devoted to the use of the Sisters room erected as a house of worship for the lepers. When the doors are open, the two apartments form the nave and chancel of a church The doors being closed, the larger apartment, which is unconsecrated, remains available for the services of other religious denominations, and the chapet which was dedi-7th June, 1848, and commonly known as Crown cated, remains secluded for the sacred exercises to Kilauca. We wish Mr. Mache all success here,

About 9 A. M. a crowd of lepers was assembled in the large room There were also present Her Majesty the Queen, attended by Mrs. Iaukea, the President of the Board of Health, and Mrs. F. H. Hayselden, the Mother Superior and Sister Theresa, of the Sisterhood of the Sacred Heart. The clergy present were the Lord Bishop of Olba, and Fathers Damien, Clement, Sylvester, Leonor and Bouchard,

Before the ceremony commenced, Mr. Gibson addressed a few words to the lepers, who had assembled to listen to it. He said that "it had been the earnest desire of Their Majesties and of the Government to devise and carry out measures to alleviate their sufferings. Hence skilled physicians had been sent for, and ladies who devoted their lives to the nursing and care of the sick and suffering, had come across the seas to minister to their wants. They could rejoice at the presence of these worthy Sisters, Dominis as Crown Lands after the Act of 1864 | who had already entered upon their work. On pork. passed and they have ever since been leased and | this occasion the Ministers of the Sisters' ion might be performed. They had a chan- Paoauhan and discharge her cargo cel, which constituted in fact a part of the dwelling of the Catholic Sisterhood. The place | tinual down pour of rain night and day, the result they were in, would afford opportunity for in- of which is that business of all kinds is at a comstruction to be imparted to them by the fathers | plete standstill. and teachers of other creeds. Here they might listen to the Protestant, Anglican, or other ministers who may desire to impart consolation and instruction to them. Ministers of all religions had been invited to come and make use of this hall, devoted to religious instruction and worship. This morning Her Majesty, their good Queen, was present, having come to manifest sympathy and rejoicing with any and every effort that was made to promote the health and welfare of the people; and as to the Sisters, he would say, that they had all great reason to be thankful that these noble-hearted ladies had left home and duties elsewhere to come and devote themselves to the care of the sick poor of

The doors were then thrown open and His Majesty and the other invited visitors took their seats in the chancel with the Sisters. The object of the assembly. The Bishop and other clergy and acolytes, then issued in procession from the chancel passing down the main aisle of the building chanting the solemn dedicatory, hymn. They passed outside and round the structure returning to the altar where pontifical high mass was celebrated. After the kyrie and gloria had been chanted by the choir (which is chiefly composed of lepers) Bishop Hermann put on the Pontifical robes and addressed the congregation. His Lordship was so 'visibly moved by the solemnity and peculiarity of the occasion that the audience was also deeply affected. Our present tells us : "It was a solemn moment-tears flowed from the Bishop's eyes, and there was hardly a dry eye to be seen-a spectacle never to be forgotten." After controlling his emotion, the Bishop proceeded with his address. "This is a supreme moment in patients to make proper use of the privileges that were now offered to them, which were with-

Four baptisms were then performed, and the service was then concluded by the singing of the Sanctus and Agnes, from Mozart's fourth

The choral part of the service was unexpectedly pleasing. Mr. Van Giesen presided at the piano. After the sermon a little leper girl eight or nine years old, named Rebecca Puna, sang the solo part of a hymn very sweetly, in which the full choir joined in the chorus. When Her Majesty drove away, after the conelusion of the ceremony, she cried out to the assembled patients, "Aloha nui oukou," which greeting was replied to with a loud and unanimous "Aloha" from these poor victims of a living death.

Colonial News.

The New Zealand Herald says: "For

the first time in the history of the Australian colonies one great question occupies the attention of the people in them all. Federation has been freely spoken of for estopped to claim the land, for if the administrator many years past, but its discussion was had done his duty he would have sold it. But the solely confined to speculative writers, and grant of the Legislature was for the benefit of the | it could hardly be said to have at any time eigning Sovereign, and I cannot see how the heirs | entered into the domain of practical poli of the private estate, are bound upon any equitable | ties. But the facts that France showed a disposition to take possession of several groups of islands besides those which she has held for years; that these islands would be used, not for the purposes of colonisation and trade, but for enormous penal establishments and military stations, have quickly changed the position of affairs. Already the escape of criminals from New Caledonia has been felt as a serious evil; and if the French projects of transportataion are com-pleted, large numbers of the very worst class of prisoners will every year get free to spread over the British colonies in these seas. The evils that this would involve are very great, and the colonists of Australasia are determined to do all they can to avert them. In this they anticipate the cordial aid and assistance of the home Government and of public sentiment in England. The formation of military and naval stations by European States in these seas would also be a powerful menace to the trade and com-merce of the colonies, and would compel on their part the maintenance of military establishments. The Conference of delegates from the Colonies which met in Sydney, has concluded its labors, the Bill which the members drafted for the formation of a federal coucil has been sent to England, and the whole subject of their action is being A LUNCH, a SMOKE or a game of BILLIARDS.

Island Notes.

KILAUEA, Kauai, January 15, 1884. The management of Kilauea Sugar Plantation has once more changed hands. This news was anticipated by a rumor to the same effect the previous week, which set all Kilauea by the ears. The of Mercy. This chapel is so arranged as to be little story was skilfully set afloat, and though it only divided by folding doors from a much larger | was strictly accurate in the beginning, like all stories that contain appeadventure, it spread like wild fire. The possibility soon changed to probabillity and that again to a reality. The state of suspense was a sort of mental relaxation to the inhabitants of the district. The story was discussed with eagerness, and not without excitement. Now the rumor has been confirmed and it is announced that Mr. R. A. Macfie, Jr., is once more to return and as heartily do we wish the departing manager success in whatever new sphere his energies may be

> Since writing the above Mr. Macfie arrived at Kilauea on Wednesday last, and his employees were not slow in showing their respect for him. A band of Portuguese were most demonstrative and sought | ROBT LEWERS. out Mr. Macie in the evening to testify their joy. January 17th, 1884.

HONORAA, Hamakaa, Jan. 18, 1884. The fourth commandment was never more rigorously enforced than on last Sunday morning in

'Remember the Sabbath day to keep it holy." This was the lesson the Hamakua police tried to instill into the benighted minds of some heathen Chinese when some ten or twelve of them were arrested for carrying bundles on the Sabbath. It is a strange but significant fact that nearly every bundle confiscated contained a small piece of fresh

A slight accident occurred to the new crane at treated as such. Queen Emma herself says she did religion had come to consecrate a portion of the Honokaa landing while the steamer C. R. Bishop not know it was not Crown Land until recently building where the sacred offices of that re- was discharging, which obliged her to proceed to

IMPORTERS AND COMMISSION MER-Corner of Fort and Merchant Streets. The weather for the last week has been one con-

LATE FOREIGN NEWS.

On Tuesday last, the S. S. Alameds errived, 6 days and 19 hours from S. F. She brings dates to the 15th instant. Subjoined are some of the

Hongkong, January 9th, -- An explosion at

Hanoi on the 28th ultimo destroyed two batteries of French artillery. One man was killed and three injured. Several houses and the barracks of the battery were badly damaged. Some 2,000 Annamites attacked a French post held by 500 marines. After several hours of hard fighting the Annamites retired, with the loss of 100 killed and wounded, A column of French troops, under command of Colonel Massian, left Hanoi, to hunt pirates on the Red River, and may possibly advance to Hung Hoa, just above Sontay, Colonel Brinoval overtook some of the bands of pirates in the province of Namdinh. They retired before the French troops to strong position, where they were attacked, and, after a severe fight for several hours, the French routed them. General Courbet holds Sontay with 1,000 French troops. The country for ten miles around is clear of the enemy. Hung Hoa, above Sontay, on the Red River, has been abandoned by the Black Flags. A large number of Annamites are flocking to the French headquarters at Hanoi, bringing with them Chinese stragglers. It is stated that a disunion of the Aunamites and Black Flags was caused by the loss of Sontay. Arms were found at Sontay marked "Foochow," from the Chinese arsenal. Some correspondence was also found comproming the Aunamite officials at Hue and Chinese officials, Admiral Courbet, in his report to the Government, says the loss of artillery and stores by the fire and explosion at Hanoi, December 28th, was not serious. Courbet's says the enemy's loss during the French attack upon Sontay was 400 killed and 600 wounded. The Annamite commander and his lieutenant were wounded, and several Chinese officers in the service of the Annamites were killed. The Annamites left in So to bronze cannon, 400 kilogrammes of

London, January 9th .- An officer of the American navy is reported at Dundee, Scotland. for the purpose of chartering a whaling steamer to engage in the search for Greeley, the Arctic explorer. It is expected that Captain Adams, an Arctic explorer, will be appointed to command the expedition. He has expressed the belief that the Greeley party are alive, and desires to lead the searching party.

Henry George lectured in St. James' Hall, London on the 8th January on "Progress and Poverty." Henry Labouchere, M. P., presided. Michael Davitt, Henry Broadhurst, M. P., and Rev. Stewart Headlam were on the platform. The audience was large. In the course of his lecture, George said the struggle for equal rights in land must come in England and was sure to come in America. Davitt said George was not more appreciated in America and England than in Ireland.

It is stated that owing to the threats of American Fenians against Judge Denman, who sentenced O'Donnell to be hanged, he is ever surounded by a police guard while on the Bench.

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